No. 14,825

IN THE

United States Court of Appeals

For the Ninth Circuit

GLEN T. JAMISON, Director of Internal Revenue,

Appellant,

vs.

MARIA REPETTI,

Appellee.

On Appeal from the Judgment of the United States District Court for the Northern District of California.

BRIEF FOR THE APPELLANT.

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OPINIONS BELOW.

The opinions of the District Court are reported at 131 F. Supp. 626.

JURISDICTION.

This appeal involves federal income taxes. The Commissioner has assessed taxes against taxpayer for the years 1948 and 1949. Taxpayer seeks an injunction to prevent distraint of her property pursuant to the assessment and an order removing the assessment from the assessment list. (R. 4, 6.) Taxpayer

brought her action in the District Court pursuant to the provisions of Section 272(a)(1) of the Internal Revenue Code of 1939. (R. 3, 5.) Jurisdiction was conferred on the District Court by 28 U.S.C., Section 1340. The judgment was entered on June 21, 1955. (R. 36-37.) On June 16, 1955, a notice of appeal was filed. (R. 35.) Since this was prior to the filing of the judgment, another notice of appeal was filed subsequently on June 24, 1955. (R. 38.) Jurisdiction is conferred on this Court by 28 U.S.C., Section 1291.

QUESTION PRESENTED.

Whether an injunction should issue under Section 272(a)(1) of the Internal Revenue Code of 1939 to prevent the collection of an income tax and whether assessment of such tax against the taxpayer should be removed from the assessment list on the ground that no deficiency notice preceded assessment of the tax, where the amount assessed did not exceed the amount shown as the tax by the taxpayer on her return.

STATUTES INVOLVED.

The pertinent provisions of the statutes involved are set forth in the Appendix, *infra*.

STATEMENT.

A. Repetti, now deceased, and Maria Repetti were husband and wife. For the year 1945, they filed a joint declaration of estimated tax and paid thereon $296. No personal income tax returns were filed for the year 1945 or any year from 1944 to 1949, inclusive, until 1952, when joint income tax returns in the names of A. Repetti and Maria Repetti were filed for those years. (R. 23-24.) The return for the year 1948 indicated that there was a tax due of $176. Attached to the face of the return and made a part of the return was a note reading as follows: "Tax $176, less: Overpayment due to payment on 1945 estimated tax declaration, Block No. 1576, $176.00—due none." (R. 17, 20-21.)

On the return for the year 1949, taxpayers indicated an income tax due of $312. Attached to the face thereof and made a part of the return was a note reading as follows: "Tax $312.00 less: Overpayment due to 1945 declaration estimated tax payment (block No. 1676) $94.00, balance of tax $218.00, 25% penalty $53.00, interest at 6% to November 15, 1952, $34.88, total $305.88." (R. 21.)

Maria Repetti, sometimes herein referred to as the taxpayer, and her husband never filed any claim for refund or credit of their 1945 estimated tax payments other than that which was made by filing on October 23, 1952, the delinquent joint income tax returns for the calendar years 1948 and 1949. (R. 21.)

On December 15, 1952, the Director of Internal Revenue served on taxpayer a notice of mathematical

error under the provisions of Section 272(f) of the Internal Revenue Code of 1939, asserting that the credit taken on the 1948 return was not allowable because the time had expired within which credit could be taken for the estimated tax payment in 1945. On December 12, 1952, a similar notice was served on taxpayer relative to the tax year 1949. (R. 7-10.) The Director thereupon levied an assessment against taxpayer in the amount of $260.48, covering $176 income tax, $44 penalty, and $40.48 interest for 1948 (R. 7-8), and another assessment in the amount of $132.97 covering income taxes, penalties and interest for 1949 (R. 8-10).

Taxpayer then brought these actions to enjoin distraint of her property pursuant to the assessments, and to secure their removal from the assessment list. (R. 4, 6.) The District Court granted the relief sought on the ground that the credits taken by taxpayers were not in the nature of mathematical errors, and that the Commissioner should have issued deficiency notices before assessing taxpayers as provided in Section 272(a)(1) of the Internal Revenue Code of 1939. (R. 22-25.)

SUMMARY OF ARGUMENT.

A taxpayer may be assessed without issuance of a deficiency notice for the amount of taxes shown to be due on his return. Where the tax imposed, however, exceeds the amount shown as the tax by the taxpayer upon his return, the Commissioner must issue a de-

ficiency notice before assessing the tax. Taxpayer here showed on her returns for 1948 and 1949 a certain amount of tax liability for those years, but claimed as a credit against that liability a certain payment of estimated income tax made by her in 1945. The Commissioner assessed taxpayer for the amount of taxes shown on her returns for 1948 and 1949 and not paid. The Commissioner did not issue deficiency notices before doing so because there was no deficiency for these years within the meaning of the statute. The tax imposed did not exceed the amounts shown as the tax by the taxpayer upon her return.

Section 271(b) of the Internal Revenue Code of 1939 provides that the tax imposed by Chapter 1 of the Internal Revenue Code of 1939 and the tax shown on the return shall both be determined without regard to payments on account of estimated tax. Since the payment taxpayer wishes to credit against her taxes due for 1948 and 1949 was made as an installment of estimated tax in 1945, it should *a fortiori* not be considered in determining the taxes due in 1948 and 1949. Section 322(d) of the Internal Revenue Code of 1939 also shows that payment and overpayment do not enter into the determination of a deficiency, so that the payment made by taxpayer in 1945 cannot be considered in determining whether there was a deficiency in 1948 and 1949.

The purpose of the injunction sought by taxpayer is to assure her the benefit of the administrative process before deficiencies are assessed. This includes

recourse to the Tax Court within ninety days of the issuance of the deficiency notice. But in order to determine in this case whether the payment of estimated tax made by taxpayer in 1945 may apply as a credit against her liability for 1948 and 1949, the Tax Court would have to determine her correct liability for 1945. This it would be without jurisdiction to do for the reason that only the years 1948 and 1949 would be before the Court, and Section 272(g) forbids it to determine whether or not the tax for any year not before it has been overpaid or underpaid. Therefore it would avail taxpayer nothing to force the issuance of a deficiency notice here, because the Tax Court would be unable to decide the problem. The assessments made by the Commissionr should be allowed to stand bcause taxpayer has no other recourse under any circumstances but to pay them and sue to recover the amounts paid.

ARGUMENT.

I.

ASSESSMENT OF A TAX NEED NOT BE PRECEDED BY THE ISSUANCE OF A DEFICIENCY NOTICE WHERE THE AMOUNT ASSESSED DOES NOT EXCEED THE AMOUNT SHOWN AS THE TAX BY THE TAXPAYER UPON HIS RETURN.

When a taxpayer submits his return showing a certain amount of tax due, but fails to pay the money, the Commissioner is authorized and required to make an assessment for it. Section 3640, Internal Revenue Code of 1939 (Appendix, *infra*); *United States v. Erie Forge Co.,* 191 F. 2d 627 (C.A. 3d),

certiorari denied, 343 U.S. 930, rehearing denied, 343 U.S. 970. However, if the Commissioner determines that the taxpayer owes more taxes than indicated by his return, a condition generally known as a deficiency, the Commissioner cannot immediately assess the taxpayer for the difference. He must follow a certain procedure under these circumstances. A vital part of that procedure is set out in Section 272(a)(1) of the Internal Revenue Code of 1939 (Appendix, *infra*), providing that the Commissioner is authorized to send notice of such deficiency to the taxpayer. Within ninety days after such notice is mailed, the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. No deficiency may be assessed, nor distraint or proceeding in court prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Tax Court, until the decision of the Court has become final. Moreover, notwithstanding the provisions of Section 3653(a) of the Code (Appendix, *infra*) which generally forbid suits by taxpayers to restrain assessment or collection of taxes, the making of an assessment or the beginning of a distraint or proceeding in Court during the time such prohibition is in force may be enjoined by a proceeding in the proper Court. Taxpayer here has brought this action to enjoin the collection of taxes on the theory that the Commissioner has assessed deficiencies against her without first sending her notice of the deficiencies, and thus she has been deprived of that ninety-day

period during which she could have filed a petition with the Tax Court for a redetermination of those deficiencies.

It is the position of the Director here that the assessments for the years 1948 and 1949 in question were legal despite the Commissioner's failure to issue deficiency notices because the Commissioner was merely trying to collect taxes the amount of which taxpayers admitted on the returns for those years, and was not asserting any deficiency against taxpayers. The issue turns upon the interpretation of the word "deficiency" which is defined in Section 271(a) of the Internal Revenue Code of 1939 (Appendix, *infra*) as follows:

> (a) *In General.*—As used in this chapter in respect of a tax imposed by this chapter, "Deficiency" means the amount by which the tax imposed by this chapter exceeds the excess of—
>
> (1) the sum of (A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus (B) the amounts previously assessed (or collected without assessment) as a deficiency, over—
>
> (2) the amount of rebates, as defined in subsection (b)(2), made.
>
> * * * * * * *

For purposes of this case the definition may be simplified to "the amount by which the tax imposed by this chapter exceeds * * * the amount shown as the tax by the taxpayer upon his return * * *."

The Director submits that the words "amount shown as the tax by the taxpayer upon his return" mean exactly what they say, and that taxpayer showed $176 as such amount in 1948 and $312 as such amount in 1949. Since each of these amounts (plus interest and penalties which are not deficiencies (*United States v. Erie Forge Co., supra;* cf. *Hastings & Co. v. Smith* (C.A. 3d), decided July 12, 1955 (1955 P-H, par. 72,833), reversing, 122 F. Supp. 604 (E.D. Pa.)), equals the amount of tax imposed by this chapter for those years, the excess of the latter over the amount shown as the tax by the taxpayer upon his return is zero, and therefore there is no deficiency. The Director's position is supported by *Jackson Iron & Steel Co. v. Commissioner,* 54 F. 2d 861 (C.A. 6th), certiorari denied, 286 U.S. 549, in which the Sixth Circuit held that a "deficiency" assessment did not result where the Commissioner finally determined an income tax for the year 1918 which was $13,672.93 less than the amount shown on the face of that taxpayer's return but which was $50,127.21 more than the amount admitted by the taxpayer to be due in an application for special relief under Sections 327 and 328 of the Revenue Act of 1918, c. 18, 40 Stat. 1057. In rejecting the contention of the taxpayer there made the Court also pointed out that the provisions of the statute involved are not ambiguous.

We respectfully submit that *Maxwell v. Campbell,* 205 F. 2d 461 (C.A. 5th), relied upon by the District Court, is distinguishable from the instant case. That case was argued by the taxpayers on the theory that

the Commissioner had, without issuing a deficiency notice, assessed taxes in excess of the amount of tax shown by the taxpayers on their return. The Court took notice of that fact in its opinion as follows (p. 462): "In addition, they [taxpayers] pointed out that the principal amount of each assessment was in excess of the amount shown by the return."

Hastings & Co. v. Smith, 122 F. Supp. 604 (E.D. Pa.), cited by the District Court (R. 33), was also a case in which the tax imposed exceeded the amount shown on the return. It involved a true deficiency, and the trial Court held that interest claimed by the Government on this deficiency was entitled to the same administrative treatment as the deficiency itself, that is, a deficiency notice prior to assessment. But even this latter ruling was reversed by the Court of Appeals for the Third Circuit under date of July 12, 1955 (1955 P-H, par. 72,833), which held that because the taxpayer there had consented to the collection of the deficiency in tax the notice provisions of Section 272(a) are not applicable, and the interest could be assessed and collected independently. The case does not in any sense support taxpayer's contention that assessment of the principal amount shown here as the tax on the taxpayer's return (or a part thereof) plus interest thereon must be preceded by a deficiency notice.

The Commissioner here has not assessed principal amounts in excess of the amounts shown on taxpayer's returns. Such principal amounts were the very amounts returned by taxpayer or less. Hence

there is no deficiency for which the Commissioner could issue a deficiency notice.

II.

THE PAYMENT MADE BY TAXPAYER ON ACCOUNT OF ESTIMATED TAX IN 1945 CANNOT BE CONSIDERED IN DETERMINING THE EXISTENCE OF A DEFICIENCY FOR THE YEARS 1948 AND 1949.

Taxpayer's argument that the assessment made by the Commissioner was in fact a deficiency assessment depends ultimately upon the fact that taxpayer made a payment of estimated tax in 1945. Without that payment, taxpayer would without question have owed the taxes shown on the 1948 and 1949 returns. We submit that the Internal Revenue Code of 1939 forbids the consideration of that payment in the determination of deficiencies. Section 271(b) (Appendix, *infra*) provides that the tax imposed by Chapter 1 and the tax shown on the return shall both be determined without regard to payments on account of estimated tax. *Keefe v. Commissioner,* 15 T.C. 947; *Redcay v. Commissioner,* 12 T.C. 806. The payment upon which taxpayer relies was a payment on account of estimated tax, and this for a year (1945) not involved in the Commissioner's assessments. (R. 17.) It should not therefore be considered in computing the difference between the tax imposed and the tax shown on the returns for the years 1948 and 1949. The difference then is zero, and there is no deficiency within the meaning of Section 271(a) of the Internal Revenue Code of 1939 for these latter years.

This position of the Director is further supported by Section 322(d) of the Code (Appendix, *infra*), which authorizes the Tax Court to determine overpayments where timely claim for refund has been filed. That section provides that if the Tax Court finds that there is no deficiency, and further that taxpayer has made an overpayment—

> in respect of the taxable year in respect of which the Commissioner determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of tax in respect of such taxable year, the Tax Court shall have jurisdiction to determine the amount of such overpayment, * * *.

Thus payment and overpayment do not enter into the determination of a deficiency; otherwise there could not be a deficiency and an overpayment for the same year. Applied to the instant case, this means that the 1945 payment made by taxpayer cannot be taken into consideration in determining whether there was a deficiency in 1948 and 1949. Without the 1945 payment, taxpayer has no argument at all to support her position that the Commissioner was asserting such a deficiency, and this payment we submit should be completely disregarded here.

III.

THE PURPOSE OF THE INJUNCTION SOUGHT BY TAXPAYER IS TO ASSURE HER THE BENEFIT OF THE ADMINISTRATIVE PROCESS INCLUDING RECOURSE TO THE TAX COURT, BUT HERE THE TAX COURT WOULD BE WITHOUT JURISDICTION TO ADJUDICATE TAXPAYER'S CLAIMED DEFICIENCY, SO THE INJUNCTION WOULD BE WITHOUT PURPOSE.

If the Commissioner in this case had issued a ninety-day letter, as taxpayer insists he should have, taxpayer would then have had two alternatives. She could have paid the tax claimed by the Commissioner, and sued to recover it (Section 3772(a), Internal Revenue Code of 1939 (26 U.S.C. 1952 ed., Sec. 3772); 28 U.S.C., Section 1346), or she could have filed a petition with the Tax Court for a redetermination of the deficiency. Section 272(a)(1) of the Internal Revenue Code of 1939. To follow the first alternative, taxpayer needed no ninety-day letter. As stated, she could have paid the tax claimed by the Commissioner at any time and sued to recover it. Presumably, therefore, taxpayer wished to petition the Tax Court. We submit that this would have proved a barren course, and that the Tax Court would have found itself without jurisdiction to decide the case on the merits.

The gist of taxpayer's case is that a payment made in connection with her estimated tax for 1945 should have been credited to the years 1948 and 1949 which are in question here.* This would necessarily require

*Taxpayer is plainly wrong on the merits of this issue because the statute of limitations in Section 322(b)(1), Internal Revenue Code of 1939 (Appendix, *infra*), has run on any credit or refund

a determination by the Tax Court as to whether there was an overpayment in 1945. But the year 1945 would not be before the Court which would therefore be unable to decide the problem; for the Tax Court has no jurisdiction to determine the year or years to which the Commissioner should apply a credit for the overpayment of tax for a year not before it. Section 272(g) of Internal Revenue Code of 1939 (Appendix, *infra*). The Tax Court acquires jurisdiction only where, and for the year in which, the Commissioner asserts a deficiency; and it has nothing to do with matters of collection. *F. A. Gillespie Trust v. Commissioner,* 21 T.C. 739; *Gould-Mersereau Co. v. Commissioner,* 21 B.T.A. 1316; *Dickerman & Englis, Inc. v. Commissioner,* 5 B.T.A. 633.

The severity with which this statutory provision is applied appears in the case of *Commissioner v. Gooch Co.,* 320 U.S. 418. Because of an error in valuation of inventory, taxpayer there overpaid its 1935 income tax. Subsequently when the inventory was revalued, it resulted in a decrease in the 1935 tax and an increase in the 1936 tax. The statute of limitations barred refund of the 1935 overpayment. The Commissioner determined a deficiency in the 1936 tax, and

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of an estimated tax paid in 1945. The estimated tax was deemed to have been paid on March 15, 1946. Section 322(e), Internal Revenue Code of 1939. (Appendix, *infra.*) Since no claim for credit or refund was made until the filing of the 1948 and 1949 returns on October 23, 1952 (if those returns can be considered such), the time to claim a credit or refund expired two years after March 15, 1946, and taxpayer's claim on October 23, 1952, was too late. It is to be further noted that under Section 3775(b) of the Code (26 U.S.C. 1952 ed., Sec. 3775), a credit of an overpayment in respect of any tax "shall be void" if at the time a refund of such overpayment is barred by the statute of limitations.

taxpayer sought to apply the 1935 overpayment to satisfy the 1936 deficiency. It went to the Board of Tax Appeals for a redetermination of taxes for the year 1936. The Supreme Court held that the Board had no power to order a refund or a credit for the year 1935, saying (p. 420):

> The Board is confined to a determination of the amount of deficiency or overpayment for the particular tax year as to which the Commissioner determines a deficiency and as to which the taxpayer seeks a review of the deficiency assessment. Internal Revenue Code, §§ 272, 322(d). It has no power to order a refund or credit should it find that there has been an overpayment in the year in question. * * * Section 272(g) of the Internal Revenue Code specifically provides that "the Board in redetermining a deficiency in respect of any taxable year shall consider such facts with relation to the taxes for other taxable years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other taxable year has been overpaid or underpaid."

Applying these principles to the case before it the Court continued (p. 421):

> neither the fact that the prior overpayment could no longer be refunded nor the fact that the overpayment exceeded the amount of the deficiency had any relevance whatever to the redetermination of the correct tax for the 1936 fiscal year. The respondent, in other words, was seeking to have the 1935 overpayment used, not as an aid in redetermining the 1936 deficiency, but as an affirmative defense or offset to that deficiency. This

> necessarily involved a determination of whether there was an overpayment during the 1935 fiscal year. The absolute and unequivocal language of the proviso of § 272(g), however, placed such a determination outside the jurisdiction of the Board. Thus to allow the Board to give effect to an equitable defense which of necessity is based upon a determination foreign to the Board's jurisdiction would be contrary to the expressed will of Congress.

We submit that if taxpayer prevails in this action, requiring the Director to issue a notice of the determination of deficiencies for 1948 and 1949, taxpayer's only course which is not already open to her will be to petition the Tax Court for a redetermination of such deficiencies. In the Tax Court she will inevitably be met with the *Gooch* case. The petition for redetermination will be dismissed, and taxpayer will be in the same position she is in now, except that she will have contributed to an increase of fruitless litigation rather than the diminution of it.

The District Court was under the impression that because a small amount of money is involved here the Director wants to collect it without regard for taxpayer's rights. We earnestly submit that this is not so. On the other hand it clearly appears that this is not an appropriate situation for resort to an injunction by a taxpayer, whatever the amount of money involved. This Court itself has stated that the injunctive relief provided by Section 272(a)(1) is (*Ventura Consolidated Oil Fields v. Rogan,* 86 F. 2d 149, 154-155 (C.A. 9th), certiorari denied, 300 U.S. 672) "for the

specific purpose of assuring taxpayer that a claimed deficiency shall be determined by the administrative process and adjudication by the Board of Tax Appeals provided by the statute." For two reasons, as pointed out above, taxpayer here does not meet the purpose laid down by this Court. First, there is no claimed "deficiency" within the meaning of the statute, and, secondly, adjudication of the issue taxpayer wishes to raise is beyond the statutory jurisdiction of the Tax Court.

CONCLUSION.

For the reasons stated, the decree of the District Court should be reversed and taxpayer's action dismissed.

Respectfully submitted,

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(Appendix Follows.)

Appendix.

Internal Revenue Code of 1939:

SEC. 271 [As amended by Sec. 14(a) of the Individual Income Tax Act of 1944, c. 210, 58 Stat. 231]. DEFINITION OF DEFICIENCY.

(a) *In General.*—As used in this chapter in respect of a tax imposed by this chapter, "deficiency" means the amount by which the tax imposed by this chapter exceeds the excess of——

(1) the sum of (A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus (B) the amounts previously assessed (or collected without assessment) as a deficiency, over——

(2) the amount of rebates, as defined in subsection (b)(2), made.

(b) *Rules for Application of Subsection (a).*—For the purposes of this section——

(1) The tax imposed by this chapter and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 35, and without regard to so much of the credit under section 32 as exceeds 2 per centum of the interest on obligations described in section 143(a);

* * * * * * *

(26 U.S.C. 1952 ed., Sec. 271.)

SEC. 272 [As amended by Sec. 203(a) of the Act of December 29, 1945, c. 652, 59 Stat. 669]. PROCEDURE IN GENERAL.

(a)(1) *Petition to Tax Court.*—If in the case of any taxpayer, the Commissioner determines

that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the ninetieth day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 3653(a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. * * *

* * * * * * *

(g) *Jurisdiction Over Other Taxable Years.*—The Tax Court in redetermining a deficiency in respect of any taxable year shall consider such facts with relation to the taxes for other taxable years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other taxable year has been overpaid or underpaid.

* * * * * * *

(26 U.S.C. 1952 ed., Sec. 272.)

SEC. 322. REFUNDS AND CREDITS.

* * * * * * *

(b) *Limitation on Allowance.*—

(1) *Period of limitation.*—Unless a claim for credit or refund is filed by the taxpayer within three years from the time the return was filed by the taxpayer or within two years from the time the tax was paid, no credit or refund shall be allowed or made after the expiration of whichever of such periods expires the later. If no return is filed by the taxpayer, then no credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

* * * * * * *

(d) [As amended by Sec. 169(b) of the Revenue Act of 1942, c. 619, 56 Stat. 798, and Sec. 14(d) of the Individual Income Tax Act of 1944, *supra*] *Overpayment Found by Tax Court.*—If the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of tax in respect of such taxable year, the Tax Court shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Tax Court has become final, be credited or refunded to the taxpayer. * * *

(e) [As amended by Sec. 4(b) of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126] *Presumption as to Date of Payment.*— * * * For the purposes of this section, any amount paid as estimated tax for any taxable year shall be

deemed to have been paid not earlier than the fifteenth day of the third month following the close of such taxable year.
(26 U.S.C. 1952 ed., Sec. 322.)

SEC. 3640. ASSESSMENT AUTHORITY.

The Commissioner is authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this title, or accruing under any former internal revenue law, where such taxes have not been duly paid by stamp at the time and in the manner provided by law.

(26 U.S.C. 1952 ed., Sec. 3640.)

SEC. 3653. PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) *Tax.*—Except as provided in sections 272 (a), 871(a) and 1012(a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

* * * * * * *

(26 U.S.C. 1952 ed., Sec. 3653.)